S.B. CIVIL WRIT PETITION NO. 607/1996

LRs of Rajjak Vs. Board of Revenue & Ors.

DATE OF ORDER : 24.04.2006

HON'BLE MR. GOVIND MATHUR, J.

Mr. V.N. Kalla, for the petitioners.
Mr. B.L. Tiwari, Dy. Govt. Advocate.

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The Assistant Collector, Deedwana by the judgment and decree dated 18.11.1985 declared the petitioner a tenant for land situated in Khasra No. 351 measuring 171 bighas and 3 biswas and in Khasra No. 353 for the land measuring 121 bighas and 3 biswas in Village Dujjar, Tehsil – Ladnu. The suit was decreed on basis of the compromise arrived at between the petitioner and Smt. Mangudi W/o Dhanna Ram by caste Meghwal. Before decree of the suit the Assistant Collector by appointing a Commissioner verified the fact about the possession of the petitioner on the land in question from last about 36-37 years. In pursuant to the judgment and decree dated 18.11.1985 necessary correction was made in revenue records and the petitioner was entered as tenant of the land in dispute.

The Addl. Collector, Nagaur by his order dated 31.3.1994 made a reference under Section 232 of the Rajasthan Tenancy Act, 1955 (hereinafter to be referred to as the Act of 1955) to the Board of

Revenue, Rajasthan, Ajmer to examine the validity and propriety of the judgment and decree dated 18.11.1985. The Board of Revenue by its judgment dated 27.3.1995 accepted the reference by quashing the judgment and decree dated 18.11.1985. The Board of Revenue held that the land in dispute was in tenancy of Dhanna Ram, a member of Scheduled Caste, therefore, merely on basis of long possession no declaration with regard to tenancy of the petitioner could have been made being in contravention of provisions of Section 42 of the Act of 1955.

By the instant petition for writ a challenge is given by the petitioner to the judgment dated 27.3.1995 passed by the Board of Revenue on the ground that there was no just and valid reason for making a reference under Section 232 of the Act of 1955 after a lapse of more than nine years after passing judgment and decree dated 18.11.1985. It is also contended by the counsel for the petitioner that the judgment and decree dated 18.11.1985 is not an outcome of any fraud or fraudulent tactics. The petitioner has substantiated his contention by placing reliance upon the Division Bench's judgment of this Court in the case of State of Rajasthan Vs. Teja & Ors. { reported in 2005 (4) RDD 921} wherein it is held that no reference could be made after unreasonable delay in absence of positive case of fraud on account of collusion between the public officer and the private party.

No reply to the writ petition is filed on behalf of the respondent – State, however, a reply to the writ petition is submitted on behalf of the

respondent No.4 Smt. Mangudi accepting that the possession over the land in question was with the petitioner from last number of years, and the name of Dhanna was erroneously entered in revenue records, as such, the provisions of Section 42 of the Act of 1955 are having no application.

Heard counsel for the parties.

The Assistant Collector, Deedwana by the judgment dated 18.11.1985 while accepting and decreeing the suit to declare the petitioner as a tenant of the land in dispute on basis of the report given by the Commissioner and other available evidence further held that the petitioner was having possession on the land in dispute from last 36-37 years. The Assistant Collector was also aware of the provisions of Section 42 of the Act of 1955, therefore, considered the effect of the provisions of Section 42 while elucidating the controversy and held that the land was erroneously entered under the tenancy of Dhanna Ram at the time of settlement. The trial court on basis of the available evidence reached at a specific conclusion that the petitioner having been in possession over the land in dispute for more than three and half decades and for the reason that Dhanna Ram was erroneously entered as tenant in the land in dispute there shall be no violation of provisions of Section 42 of the Act of 1955 in decreeing the suit as claimed.

The Board of Revenue while accepting the reference by the judgment impugned has not considered this aspect of the matter and

without dealing with the evidence available on record held that the land was at one point of time entered under the tenancy of Dhanna Ram who belong to Scheduled Caste, therefore, the judgment and decree dated 18.11.1985 was in violation of Section 42 of the Act of 1955. The Board of Revenue has not at all discussed and adjudicated the finding given by the trial court with regard to erroneous entry made in the revenue records showing Dhanna Ram as tenant. The Board should have examined entire evidence available and the findings based on those evidence. In view of it, the judgment impugned is apparently perverse.

I also found force in the contention of counsel for the petitioner that there was no just and valid reason available with the respondents to make reference under Section 232 of the Act of 1955 after an inordinate delay of more than nine years from the date of declaration of the petitioner as tenant of the land in dispute. It is true that there is no limitation prescribed for making a reference under Section 232 of the Act of 1955 but such power is always required to be exercised within a reasonable period if the order passed by the court subordinate is not an outcome of fraud or is not patently illegal.

In the instant matter the Collector while making reference has not stated anything as to how the Assistant Collector committed the patent illegality or there was any fraud on account of the conclusion between the public officer and the private party.

In view of whatever discussed above this petition for writ succeeds

and therefore is allowed. The judgment impugned dated 27.3.1995 passed by the Board of Revenue, Rajasthan, Ajmer in Reference No.10/94/TA/Nagaur is quashed. No order as to costs.

(GOVIND MATHUR),J.

j.goyal